

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 35A.3(2), the Commission of Veterans Affairs hereby gives Notice of Intended Action to amend Chapter 10, “Iowa Veterans Home,” Iowa Administrative Code.

These proposed amendments add language regarding the ability for domiciliary residents to leave the facility on a pass status, information about which is received from the Department of Veterans Affairs, and clarify the discharge process for emergency discharge proceedings and the responsibility for discharge appeals.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 10, 2009. Such written materials should be directed to John Mathes, Interim Commandant, Iowa Veterans Home, 1301 Summit Street, Marshalltown, Iowa 50158-5485, or faxed to (641)753-4278. E-mail may be sent to john.mathes@ivh.state.ia.us. Persons who wish to convey their views orally should contact the Commandant’s office at (641)753-4309 at the Iowa Veterans Home.

If requested in writing, a public hearing on the proposed amendments will be held on November 11, 2009, at 1 p.m. in the Ford Memorial Conference Room at the Iowa Veterans Home, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Iowa Veterans Home to advise of specific needs. If no written or oral requests for a public hearing are received, the public hearing will be canceled without further notice.

These amendments are intended to implement Iowa Code chapter 35D as amended by 2009 Iowa Acts, Senate File 407.

The following amendments are proposed.

ITEM 1. Amend rule **801—10.36(35D)**, catchwords, as follows:

801—10.36(35D) Leave, ~~and~~ bed holds and 96-hour passes.

ITEM 2. Amend paragraphs **10.36(1)“f”** and **“g”** as follows:

f. When ~~a~~ the nursing care member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

g. When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member while on leave.

ITEM 3. Adopt the following **new** subrule 10.36(3):

10.36(3) *Ninety-six-hour passes for domiciliary members.*

a. A pass shall not exceed 96 hours. If a member expects to be gone for more than 96 hours, a leave is required.

b. Upon return from a pass, the member must spend 24 hours in residence before another pass is issued.

c. When a member is on pass, the member shall remain on in-house status for DVA per diem purposes; IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

ITEM 4. Renumber subrules **10.43(4)** to **10.43(6)** as **10.43(5)** to **10.43(7)**.

ITEM 5. Adopt the following **new** subrule 10.43(4):

10.43(4) Emergency discharge. In the case of an emergency transfer or discharge relating to a threat of imminent harm, the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file, and it must contain all the information required by 10.43(3). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as 'Commission') within 5 calendar days after receiving this notice. If you request a hearing, it will be held and a decision rendered within 10 calendar days of the filing of the appeal no later than 14 days after receipt of your request by the Commission. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, you may call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs."

ITEM 6. Renumber subrules **10.47(2)** to **10.47(6)** as **10.47(3)** to **10.47(7)**.

ITEM 7. Adopt the following **new** subrule 10.47(2):

10.47(2) The commission shall conduct a contested case proceeding in accordance with the uniform rules on contested case proceedings found in 801—Chapter 8. The rules in 801—Chapter 8 are adopted by reference with the following amendment: The presiding officer must be a member of the commission and cannot be an administrative law judge with the department of inspections and appeals.